

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 523 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? -
 2. To be referred to the Reporter or not? - :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? -
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? -
 5. Whether it is to be circulated to the Civil Judge? : NO
-

R V TRIVEDI

Versus

DEPUTY SECRETARY

Appearance:

MR ANANT S DAVE for Petitioner

MR LR PUJARI for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/06/2000

ORAL JUDGEMENT

The petitioner was directly recruited as a Section Officer in the year 1969 on selection by the Gujarat Public Service Commission (GPSC) and since then he was working as a Section Officer in the Agriculture and Rural Development Department, Sachivalaya, Gandhinagar.

2. The petitioner applied for leave for the period commencing from 26-9-1977 to 3-12-1977 to have visit to U.S.A. The leave was granted and it was extended upto 7-1-1978. Thereafter, the petitioner's request for further extension of leave was not granted and the petitioner remained absent unauthorisedly and he reported for duty on 31-4-1980. By the order dated 17-10-1985 the promotion of the petitioner was withheld for the period of two years. Thereafter, by the another order dated 7-1-1987 the penalty of treating the period of absence as unauthorized was imposed. The petitioner has challenged these two orders in this petition and has also sought for a direction to the respondents authorities to give deemed date of promotion to the petitioner with effect from 1980 as the petitioner was bypassed by his juniors and also to grant all other consequential benefits.

3. List has been revised. Nobody appears on behalf of the petitioner to press this petition. Heard Mr. L.R. Pujarai learned A.G.P. for the respondents and I have gone through the relevant papers on record as well as the affidavit-in-reply filed by learned A.G.P.

4. The petitioner had gone to U.S.A. for paying visit to his sister and brother-in-law. The petitioner had also applied for extension of leave. The petitioner was initially granted leave upto 3-12-1977 and thereafter the leave was further extended till 7-1-1978 but the petitioner could not return to India due to unavoidable circumstances. Therefore, the petitioner again applied for leave and the same was rejected and hence he resumed duties on 31-4-1980 and since then he is continuously working as Section Officer in the respondent department.

5. The petitioner was served with a chargesheet on 19-9-1981 whereby he was asked clarified with regard to certain allegations along with the statement of the charges and he was asked to explain in regard to period of unauthorised absence and active involvement in the business carried out by his younger brother in violation of the Gujarat Civil Services (Conduct) Rules, 1971 as the petitioner had applied for leave again and again and there was no communication from the Government. The petitioner presumed that the leave has already been sanctioned and false complaint was lodged against the petitioner and the petitioner was tried by the Metropolitan Magistrate and ultimately he was acquitted from the all the charges levelled against him in criminal case.

6. The petitioner filed Special Civil Application No.243/84 before this Court wherein this Court directed the respondents to complete the departmental inquiry within a specified time limit. It is also stated that he has also submitted the statement of defence in the departmental inquiry. The charges mentioned in the charge sheet were found to be true and proved by the Inquiry Officers. However, the petitioner was not given the papers of the charge sheet as well as required copies of the statement of the witnesses. The petitioner has been awarded punishment by the Disciplinary Authority by the order dated 17-10-1985 withholding promotion of the petitioner to higher post of under Secretary for a period of two years and his seniority was adversely affected. The petitioner was to given the deemed date of promotion in the year 1979 when no departmental inquiry was pending against him. The chargesheet was served to the petitioner in the year 1981. As such the order dated 17-10-1985 withholding promotion of the petitioner for a period of two years was illegal and violative of Articles 14, 16 and 19 of the Constitution of India. Promotion has been given to the juniors of the petitioner and the promotion of the petitioner was withheld for a period of two years. By the notification dated 24-12-1980 the juniors of the petitioners were promoted and the petitioner was bypassed. As per the notification dated 18-6-1987 the petitioner's name was shown at Sr. no. 1 in the seniority list of Section Officers. But the persons standing at Sr. 2 to 108 were promoted to the post of Under Secretary but the petitioner's promotion was not considered. After holding the departmental inquiry the petitioner was awarded punishment of withholding of promotion for a period of two years by the order dated 17-10-1985 and by the second impugned order dated 7-1-1987 the penalty of treating the petitioner's leave as unauthorised was imposed on the petitioner and that his unauthorised absence will be treated as not in service. As such, two punishments have been awarded in respect of one and the same misconduct which is against the constitutional policy and statutory provisions of law and Rules. It is also asserted that one Mr. V.V. Rawal, Under Secretary had gone abroad for personal visit and he overstayed there but no penalty was imposed upon him and his absence was condoned and after coming back from U.S.A. he was promoted to the higher post. Thus, discriminatory action of the respondents is violative of the constitutional provisions as well as statutory provisions of law.

7. Learned A.G.P. has also filed affidavit-in-reply wherein it is stated that the petitioner has already been promoted to the post of Under Secretary by the order

dated 31-7-1990. As such, the grievance of the petitioner does not survive. So far as deemed date of promotion is concerned, the matter for giving deemed date for promotion of the petitioner is pending and is in active consideration of the respondents. The petitioner proceeded on leave and did not resume his duty after completion of authorised leave. Thus, he remained on unauthorised absence. He also engaged himself in the business. After holding the departmental inquiry the order dated 7-1-1987 was passed and the absence of the petitioner was treated as an unauthorised treatment and the petitioner was not given salary and the said period was not to be considered for the purpose of fixation of the pension of the petitioner and other retiral benefits. It is further submitted that infliction of punishment for remaining on unauthorised leave and punishment of withholding promotion of the petitioner are two separate things. It is also denied that the petitioner has been punished twice by the respondents for the one and same misconduct. On the basis of unauthorised absence for a long time the petitioner could have been terminated. But the respondent department after considering the facts and circumstances of the case took lenient view and retained the petitioner in service and treated the period as unauthorised absence from the duty. The petitioner was given ample opportunity of being heard during the departmental inquiry and thereafter the impugned order was passed withholding the promotion of the petitioner for a period of two years. By the second impugned order the unauthorised absence was treated as a period not to be counted in the service for fixation of pension and other retiral benefits.

8. I have given my anxious thoughts to the assertions made in the petition as well as the submissions made by the learned counsel for the parties and also I have gone through the affidavit-in-reply filed by the learned A.G.P. It is the case of the petitioner that he had gone to U.S.A. on sanctioned leave. He also applied for extension of leave from time to time and accordingly leave was extended. But later on his leave was not extended and the petitioner was directed to resume his duty. However, the petitioner did not resume his duty and he remained on unauthorised absence for a period of more than two years. The petitioner has faced the departmental inquiry with regard to misconduct of unauthorised absence. For that misconduct the petitioner was awarded punishment of withholding of promotion for a period of two years and by the second impugned order dated 7-1-1987 the unauthorised absence period was not to be considered in service period and that period of

absence was excluded from the service period for the purpose of retiral benefits including fixation of pension. The petitioner was given full opportunity of hearing in the departmental inquiry and after considering the material on record the disciplinary authority inflicted punishments, as aforesaid. Thus, two impugned orders are different one and it cannot be said that both the impugned orders are violative of the constitutional provisions and statutory provisions of the law. By the order dated 17-10-1985 the punishment of withholding promotion of the petitioner for two years was inflicted after giving full opportunity of hearing to the petitioner in the departmental inquiry. So far as the second impugned order not treating the unauthorised absence in service is not punishment which is passed on the basis of the unauthorised absence and therefore it cannot be said that two punishments have been awarded for one and the same misconduct. So far as the fixation of the deemed date of the petitioner's promotion is concerned, it was in active consideration of the Government at the relevant time. Learned A.G.P. informed that Court he has to inquire as to whether the petitioner was given any deemed date of promotion. Though the petitioner has already been promoted to the post of Under Secretary by the order dated 31-7-1990.

9. After careful consideration of the material on record and the submissions made by the learned counsel for the respondents, I do not find any reason to interfere with the impugned orders in exercise of extraordinary powers under Article 226 of the Constitution of India. As such, the petition is liable to be dismissed. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs. Interim relief granted earlier stands vacated.

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/JVSatwara/